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No. 07-194

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IN THE SUPREME COURT OF THE UNITED STATES

TAMARA GOMEZ, *Petitioner,*

v.

STATE OF CALIFORNIA, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SIXTH APPELLATE DISTRICT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a remand for reconsideration in light of *Brendlin* v. *California*, 551 U.S. __, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007), is appropriate, given that the state court ruled that petitioner lacked standing, and, alternatively, that the stop of the vehicle in which petitioner rode was reasonable under the Fourth Amendment.

2. Whether certiorari is appropriate to review the state court's determination that a police officer had probable cause to believe that a four-by-six-inch object suspended from the vehicle's rear view mirror obscured the driver's view in violation of California Vehicle Code section 26708(a)(2).

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IN THE SUPREME COURT OF THE UNITED STATES

No. 07-194

TAMARA GOMEZ, *Petitioner,*

v.

STATE OF CALIFORNIA, *Respondent.*

OPINION BELOW

The Superior Court for the State of California, County of Santa Clara, denied petitioner's motion to suppress evidence obtained after a police officer stopped the car in which petitioner was a passenger. A jury convicted petitioner of possession of methamphetamine for sale, possession of drug paraphernalia, and possession of 28.5 grams or less of marijuana. Cal. Health & Safety Code §§ 11379, 11364, 11357(b). (App. A to Pet. Cert. 1.) The Court of Appeal affirmed the conviction, finding that petitioner lacked standing to challenge the stop of the vehicle. The court also held that if it were to reach the merits it would find that the stop was lawful. (App. A. to Pet. Cert. 6 & fn. 2.) The California Supreme Court denied review. (App. B. to Pet. Cert.)

JURISDICTION

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257 (a).

STATEMENT OF FACTS

The Court of Appeal described the facts of the investigative stop and resulting arrest as follows:

> At about 10 p.m. on April 10, 2005, Erik Tiner, a corporal with the police department in Gilroy, was on patrol in an unmarked police car when he noticed a driver, Noel Lara, make two quick right turns. It appeared to Corporal Tiner that the driver had seen him and was avoiding contact with him. Lara then pulled into a closed gas station and left again a few seconds later. Corporal Tiner followed the car a short distance more and then stopped the driver for having something hanging from the rearview mirror.[1] [Petitioner] was a passenger in Lara's car.
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> Lara and [petitioner] both told Corporal Tiner that they had no identification. After a backup officer arrived, Corporal Tiner asked [petitioner] to step out of the car. He then "asked her if she would mind emptying her pockets," because he suspected that she in fact had identification with her. While she was complying, [petitioner] began fidgeting and shaking her leg, and then a plastic baggie fell out of her pants leg. Corporal Tiner believed that the baggie contained methamphetamine and told defendant to give it to him. [Petitioner] did so, and Corporal Tiner placed her under arrest.
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> . . .
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> At trial [petitioner] testified in her own behalf. She said that when she noticed that Lara and she

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1. The Court of Appeal observed elsewhere in its opinion that "the People presented testimony from Corporal Tiner that he believed the four-by-six-inch object was impairing Lara's clear view." (App. A to Pet. Cert. 6, fn. 2; see 1 Rep.'s Tr. 4-6.)

were being followed by the police, she was not especially concerned because she had only a pipe and a "roach" on her. When they reached the gas station she put these items inside her pants. After the patrol car's lights were on, Lara put the baggies of methamphetamine in front of her purse at her feet. [Petitioner] considered Lara a good friend. But she was afraid that Lara would tell the police that the drugs were hers, so she put them down her pants, not realizing that there were two baggies rather than one.

[Petitioner's] description of the encounter with Corporal Tiner was consistent with his. She stated that after she told him she had no identification, the officer asked her if she "would mind stepping out of the vehicle" so that he could search for weapons. [Petitioner] thought he was going to search the car. Corporal Tiner then requested that she go to the front of the car. He asked her if she "would have a problem with removing anything from [her] jacket pockets or [her] pant pockets." [Petitioner] said she did not, and she put some items from her jacket pocket on the hood. Then he asked her if she "would mind if he did . . . a pat, a frisk, or whatever, pat-down." [Petitioner] asked him why, and the officer explained that he believed she might have identification. While trying to show him that she had none, she felt the bag coming out of her pants leg. Upon her arrest Corporal Tiner asked if she had anything that should not be brought into the police car or the station, and she told him about the methamphetamine pipe and the roach.

(App. A to Pet. Cert. 1-4 [footnote added].)

ARGUMENT

A REMAND IS NOT WARRANTED BECAUSE THE COURT OF APPEAL'S FINDING THAT THE STOP WAS LAWFUL WAS INDEPENDENT OF THE COURT'S RULING ON PETITIONER'S STANDING TO CHALLENGE THE STOP

In affirming the conviction, the Court of Appeal concluded that petitioner lacked standing to challenge the stop. It also stated in a footnote that had it reached the merits, it would not have found the stop unlawful. (App. A. to Pet. Cert. 6, fn. 2.) The trial court likewise had found the stop to be lawful. (1 Rep.'s Tr. 28.)

Petitioner argues that the Court of Appeal's ruling that she lacked standing to challenge the stop is inconsistent with *Brendlin* v. *California*, 551 U.S. __, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007) (*Brendlin*). In *Brendlin* the Court held that a passenger has standing under the Fourth Amendment to challenge the lawfulness of a car stop. *Id.* at 2406-07.

Petitioner asks that her case be remanded for proceedings consistent with *Brendlin*. (Pet. Cert. 4.) However, petitioner's standing to challenge the stop does not require a remand in her case. The Court of Appeal considered and rejected her claim that the stop was unlawful. Specifically, the Court of Appeal declared that it would not have found the stop unlawful, in light of the officer's testimony that he believed the four-by-six-inch object hanging from the rearview mirror obstructed or reduced the driver's clear view, a violation of California Vehicle Code section 26708(a)(2). (App. A. to Pet. Cert. 6, fn. 2; App. C to Pet. Cert.)

Accordingly, the Court of Appeal's decision to uphold

the trial court's denial of the suppression motion is unaffected by *Brendlin*. Thus, there is no basis on which to remand the case. The result necessarily would replicate the one already reached by the state court.

Petitioner's second question asks this Court to determine if the police had an objectively reasonable basis to stop the car. She does not claim that the Court of Appeal applied the wrong substantive standard in finding the stop was lawful. "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren* v. *United States*, 517 U.S. 806, 810 (1996). The Court of Appeal's decision to uphold the stop did not conflict with that principle.

Nor has petitioner suggested any substantial basis on which to overturn the state court's application of the law to the record evidence. She cites *People* v. *White*, 107 Cal. App. 4th 636, 642, 132 Cal. Rptr. 2d 371 (2003), but that decision rejected an obstruction of view as probable cause for a stop where no officer testified to a belief that the driver's view was obstructed. Here, the testimony missing in *White* was supplied and credited by both the trial court and the Court of Appeal. Petitioner's probable cause claim is fact bound and not a substantial federal question requiring review.

Because *Brendlin* has no effect on the validity of the state court's decision upholding the stop of the vehicle, petitioner establishes no need for a remand. Furthermore, the Court of Appeal upheld the admission of the evidence seized from petitioner under established Fourth Amendment principles regulating car stops. There is no substantial federal question concerning the correctness of those principles or their application to this case. Accordingly, there is no basis for a writ of certiorari.

CONCLUSION

For the foregoing reasons respondent respectfully requests that the petition for writ of certiorari be denied.

Dated: October 24, 2007

Respectfully submitted,

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